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## Energy Independence through Increased Utilization of American Coal: Goal of the 98th Congress

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*United States Senate*

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## Essays

### **ENERGY INDEPENDENCE THROUGH INCREASED UTILIZATION OF AMERICAN COAL: GOAL OF THE 98th CONGRESS**

THE HONORABLE JAMES A. MCCLURE\*

#### INTRODUCTION

The rapid heightening of tensions in the Middle East in 1983 created an atmosphere of uncertainty surrounding both American oil-supply lines and relations with oil-producing nations in that critical area of the world. Once again the point is driven home that the United States, for reasons of national security and economic prosperity, must expedite efforts to move towards energy independence. But, energy independence can best be accomplished through the maximum development of all U.S. indigenous energy resources, plus serious conservation measures. These resources include coal, oil, gas, nuclear, hydropower, geothermal, wind, solar, synfuels, biomass, and oil shale.

Of these resources, coal represents a great opportunity for this country to more quickly reach its energy independence goal. Coal fueled America's industrial revolution and helped power this nation into the twentieth century and worldwide prominence. Moreover, at the turn of the century, it provided nearly 80% of America's total energy needs and was the country's predominant energy fuel.<sup>1</sup>

However, in the 1940s, coal's predominance waned as America turned to cheaper, cleaner-burning fuels. By the 1960s, the United States had steered onto a dangerous course toward dependence upon foreign sources of fuels—namely Middle East petroleum. This dependence resulted in grievous economic hardships when political instability in that region during the 1970s resulted in ruinous price increases for oil imported from Organization of Petroleum Exporting Countries (OPEC).

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<sup>1</sup> AMERICAN PETROLEUM INSTITUTE, TWO ENERGY FUTURES: A NATIONAL CHOICE FOR THE '80's, 91 (1983).

These high prices contributed significantly to the worldwide economic recession, from which the United States is only now beginning to make a strong recovery. The price hikes also refocused attention on coal by the public and private sector groups interested in maximizing use of American domestic energy supplies.

We possess an estimated 473 billion tons of minable coal reserves—the largest amount of reserves in the free world.<sup>2</sup> America has been called the Saudi Arabia of coal, and coal is referred to in some quarters as “black gold.” Obviously our nation is rich in energy resources. The United States could very well be the leading coal broker for the energy-dependent nations of the world. Unfortunately, the present reality of international energy trade and usage proves otherwise.

The American coal industry has faced a worldwide economic recession since the early 1980s that has kept a lid on consumption of electricity from coal-fired generators for both home-heating and industrial usage. Coal producers, furthermore, must compete in the marketplace with a variety of competitively priced alternative fuels. Coal suppliers must also overcome the perception, on the part of some, that increased coal use would have an adverse effect on the environment.

The coal sales market, both domestic and foreign, has been dormant for nearly two years. This dormancy has created an enormous economic depression within the industry,<sup>3</sup> forcing hundreds of mines to close and causing some 73,000<sup>4</sup> coal miners nationwide to be unemployed. In West Virginia, for example, 12,890 miners are currently out of work.<sup>5</sup>

Faced with this disastrous situation, coal producers have appealed to government for aid and assistance in an effort to bring health and wealth back to the industry and its workers. This appeal has been launched in many forms to the executive, legislative, and judicial branches of the federal government and to state and local governments.

The appeals, however, are often contradictory. Some call for more regulation, such as the proposed legislation to strengthen Interstate Commerce Commission (ICC) jurisdiction over coal-haul rail rates.<sup>6</sup> Others have sought less regulation, such as the proposal to relax Interior Department re-

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<sup>2</sup> *Id.* at 91-93.

<sup>3</sup> NATIONAL COAL ASSOCIATION, NCA'S 1984 FORECAST OF COAL PRODUCTION AND CONSUMPTION (1983).

<sup>4</sup> BUREAU OF LABOR STATISTICS, U.S. DEPT OF LABOR, CURRENT POPULATION SURVEY (3rd Quarter, 1983) (unpublished data).

<sup>5</sup> LABOR AND ECONOMIC RESEARCH SECTION, STATE OF WEST VIRGINIA, DEPARTMENT OF EMPLOYMENT SECURITY, CLAIMS DATA AND PAYMENT DATA, (Oct. 1983).

<sup>6</sup> S. 1082, 98th Cong., 1st Sess., 129 CONG. REC. S4,853-55 (1983); H.R. 2584, 98th Cong., 1st Sess., 129 CONG. REC. E1,621-23 (1983).

quirements for the diligent development of federal coal leases.<sup>7</sup> Similarly, Congress was asked to increase competition in coal production by amending existing law to allow railroads to purchase federal coal lands,<sup>8</sup> but to decrease competition in the transportation industry by guaranteeing that a certain percentage of United States coal exports be transported in United States flag vessels.<sup>9</sup>

Areas of concern run the legislative gamut from environment to taxes, and from employment to transportation. Accordingly, coal issues are no longer exclusively within the jurisdiction of the Senate Energy and Natural Resources Committee and the House Energy and Commerce Committee. Legislative quick-fixes are virtually non-existent. Coal problems are being debated before nearly all committees of Congress, including such unlikely panels as the House Armed Services Committee<sup>10</sup> and the House Ways and Means Committee.<sup>11</sup>

## I. LEASING

### A. *Proposed Changes in the Federal Coal Lands Leasing Amendments Act of 1976*

For most of this century, the Mineral Lands Leasing Act (MLLA)<sup>12</sup> has been the primary federal statute governing coal leasing. It provided the legal framework for the disposition of federal coal lands from 1920 until 1976, when Congress enacted the Federal Coal Lands Leasing Amendments Act of 1976 (FCLLAA).<sup>13</sup>

The FCLLAA authorized these changes: (1) replacement of the MLLA lease application system with a strict competitive bidding system for new lease sales; (2) requirements for detailed land use planning prior to a lease sale; (3) imposition of strict development and production requirements for new leases to assure production from federal leases; (4) a ban against lease issuances (coal, oil, gas, geothermal, phosphates, etc.) to companies not meeting federal coal production requirements by August 1986; (5) minimum production royalties from federal leases; and, (6) bonus and royalty receipts increases for states, rising from 37.5% to 50%.

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<sup>7</sup> S. 1634, 98th Cong., 1st Sess., 129 CONG. REC. S10,279-81 (1983); H.R. 1530, 98th Cong., 1st Sess., 129 CONG. REC. H579, E530 (1983).

<sup>8</sup> S. 1542, 97th Cong., 1st Sess., 127 CONG. REC. S8,855-56 (1981).

<sup>9</sup> S. 1000, 98th Cong., 1st Sess., 129 CONG. REC. S4,279-81 (1983); H.R. 1242, 98th Cong., 1st Sess., 129 CONG. REC. H333-38 (1983).

<sup>10</sup> H.R. 4542, 98th Cong., 1st Sess., 129 CONG. REC. H10,580 (1983).

<sup>11</sup> H.R. 3353, 98th Cong., 1st Sess., 129 CONG. REC. H4,102 (1983).

<sup>12</sup> 30 U.S.C. §§ 181-263 (1976).

<sup>13</sup> Federal Coal Leasing Amendments Act of 1976, Pub. L. No. 95-554, 92 Stat. 2075 (1976) (codified at 30 U.S.C. §§ 181-209 (1976 & Supp. IV 1980)).

Section 3 of FCLLAA bars a company which has held a federal coal lease for ten years or more but has not reached commercial quantity production by August 4, 1986, from acquiring any additional leases under the MLLA.<sup>14</sup> Legislation pending in the 98th Congress would repeal section 3 and relax other FCLLAA provisions.<sup>15</sup> The proposal drops requirements that lands within a logical mining unit be contiguous and that mine plans be submitted within three years after a lease is obtained. Attention is also being focused on MLLA provisions which prohibit companies or corporations operating a common carrier railroad from holding a federal permit or lease for coal deposits, except for coal used for railroad purposes.<sup>16</sup>

Congress enacted the legislation barring railroad coal ownership in 1920 out of concern for pricing abuses that could result from the vertical integration of coal production and transportation.<sup>17</sup> Much of railroad reserves are "checkerboarded" with federal coal in alternate square-mile sections on either side of railroad right-of-ways. In an effort to form economically minable units and produce coal, railroads want to repeal the law so they can lease adjacent federal lands. In the 97th Congress, legislation was introduced to repeal the ban.<sup>18</sup> Hearings were held, but no action was taken on the bill. There is a possibility that a similar measure will be introduced this year.

#### B. *Fair Market Value: Moratoriums and Chadha*

Many of these issues took a back seat in May of 1983, when the General Accounting Office (GAO) published a report critical of recent Interior Department coal leasing sales. As a result of the GAO Report, legislation was introduced in both houses to prohibit the Secretary of the Interior from issuing any federal coal leases for at least one year or until the Secretary would: (1) develop a detailed analysis of the economic and geographic variables affecting the value of each federal lease; (2) publish new internal procedures for conducting coal lease evaluations; (3) publish guidelines for additional and experimental bidding systems for regional coal sales; (4) calculate minimum regulatory selling prices for coal leases in each federal coal region on a cents-per-ton basis; (5) revise procedures for determining fair market value to include specific quantitative tests; (6) establish written internal procedures for safeguarding coal lease pricing, economic valuation and other proprietary data against unauthorized disclosures; and (7) submit a report to the appropriate House and Senate committees.<sup>19</sup>

<sup>14</sup> 30 U.S.C. § 202(a) (1979).

<sup>15</sup> S. 1634, 98th Cong., 1st Sess., 129 CONG. REC. S10,279-81 (1983); H.R. 1530, 98th Cong., 1st Sess., 129 CONG. REC. H579, E530 (1983).

<sup>16</sup> 30 U.S.C. § 201 (1976).

<sup>17</sup> 51 CONG. REC. 15,176-184 (1914); 58 CONG. REC. 4,591-92, 4,738-39, 4,743 (1919).

<sup>18</sup> S. 1542, 97th Cong., 1st Sess., 127 CONG. REC. S8,855-56 (1981).

<sup>19</sup> S. 1297, 98th Cong., 1st Sess., 129 CONG. REC. S6,850-51 (1983); H.R. 3018, 98th Cong., 1st Sess., 129 CONG. REC. H2,935 (1983).

Various other legislative proposals followed. Those proposals call for a moratorium on coal leasing pending congressional review,<sup>20</sup> a prohibition against new federal coal lease issuances prior to May 1, 1984, with specific instructions affecting the San Juan Basin lease sale,<sup>21</sup> and an investigation and report by a standing or select Senate committee regarding Interior coal leasing activities.<sup>11</sup>

The first battle was resolved during a House-Senate conference on a supplemental appropriations bill.<sup>23</sup> Conferees decided not to impose a coal leasing moratorium. Instead, they required the Secretary of the Interior to appoint a commission to review Interior's coal leasing procedures to ensure that the federal government receives fair market value for the leased land.<sup>24</sup> In compliance, the Interior Secretary set up the Commission on Fair Market Value Policy for Federal Coal Leasing, also known as the Linowes Commission.

At the same time the Secretary was organizing this Commission, he proceeded with plans to hold the September 14 Fort Union coal lease sale in Montana and North Dakota. However, the House Interior and Insular Affairs Committee voted 27-14 to invoke a little-used provision of the Federal Land Policy and Management Act of 1976 (FLPMA),<sup>25</sup> declaring the existence of an emergency withdrawal condition. The Committee's action was intended to force the Secretary to defer the lease sale on grounds that the federal government must take extraordinary actions to preserve values that would be lost if the lease sale were held. Hence, the Interior Committee ordered the Fort Union Region lease sale deferred until Interior's leasing policies could be studied.

The Secretary of the Interior claimed that the FLPMA provision invoked by the Interior Committee was unconstitutional. His argument was based on a recent United States Supreme Court case that struck down Congress' legislative veto authority.<sup>26</sup> The Interior Committee obtained a temporary restraining order and then a preliminary injunction, but one sale had already been held and leases covering 428 million tons of coal were issued.

The Interior Department's actions in the Fort Union lease sale brought about the second major confrontation over the invocation of a coal leasing moratorium. In consideration of the Interior Department's fiscal year 1984 appropriations bill,<sup>27</sup> the Senate voted 63-33 to stop coal leasing until ninety

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<sup>20</sup> S. 1142, 98th Cong., 1st Sess., 129 CONG. REC. S5,212-13 (1983).

<sup>21</sup> H.R. 3767, 98th Cong., 1st Sess., 129 CONG. REC. H6,453-55, 6474 (1983).

<sup>22</sup> S. Res. 123, 98th Cong., 1st Sess., 129 CONG. REC. S5,212-13, S5,231-32 (1983).

<sup>23</sup> Supplemental Appropriation Act, Pub. L. No. 98-63, 97 Stat. 301 (1983).

<sup>24</sup> H. CONF. REP. NO. 308, 98th Cong. 1st Sess. 45 (1983).

<sup>25</sup> Pub. L. No. 94-579, § 204(e), 90 Stat. 2743 (codified at 43 U.S.C. § 1714(c) (1976)).

<sup>26</sup> *Immigration and Naturalization Service v. Chadha*, 103 S. Ct. 2764 (1983).

<sup>27</sup> Department of the Interior and Related Agencies Appropriations Act, 1984, Pub. L. No. 98-146, 97 Stat. 919 (1983).

days after the Linowes Commission completed its report in January. House and Senate conferees on the bill retained the Senate's temporary ban. They also greatly broadened the mandate of the Linowes Commission and directed the Office of Technology Assessment to provide an evaluation of whether Interior's coal leasing program can ensure the development of coal leases in an environmentally acceptable manner.<sup>28</sup> With its expended mandate, the Linowes Commission prepared its report for February publication.

### C. *Foreign Ownership*

Congress has spent more time on and made more decisions on coal leasing than on any other coal-related matter in 1983. All of the leasing issues cannot be treated fully here. However, in another noteworthy leasing issue, legislation is pending that would amend provisions in the MLLA governing foreign ownership of mineral leases on federal lands.<sup>19</sup> This proposal would limit ownership of leases by citizens of foreign nations where mineral ownership by citizens of the United States is limited.<sup>30</sup>

## II. TRANSPORTATION

Transportation costs represent anywhere from 50% to 70% of the final delivered price of coal.<sup>31</sup> Accordingly, legislation generally has been aimed at improving the nation's existing coal transportation network and providing new methods to deliver coal to the consumer. The common theme in most legislative proposals is maintaining or enhancing price-competitiveness by reducing delivery costs.

### A. *The Staggers Rail Act of 1980*

Railroads are the predominant coal transportation mode in the United States. The percentage of all bituminous coal, sub-bituminous coal and lignite carried by American railroads ranges (since 1970) between 60.8% and 70.6%.<sup>32</sup> Studies show that 85% of this coal traffic is captive to the railroads. In other words, there is presently no practical alternative method of transportation.<sup>33</sup>

Because of concern about the economic health of the nation's railroads,<sup>34</sup> Congress reduced federal regulation of the industry by enacting the Staggers

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<sup>28</sup> *Id.* at § 112.

<sup>29</sup> H.R. 617, 98th Cong., 1st Sess., 129 CONG. REC. H95 (1983).

<sup>30</sup> H.R. 2434, 98th Cong., 1st Sess., 129 CONG. REC. H1,861, E1,450-51 (1983).

<sup>31</sup> S. REP. NO. 528, 97th Cong., 2d Sess., 8 (1982).

<sup>32</sup> ENERGY INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF ENERGY, RAILROAD DEREGULATION: IMPACT ON COAL, 3 (1983).

<sup>33</sup> NATIONAL COAL ASSOCIATION, STUDY OF CAPTIVE COAL SHIPMENTS BY RAIL FOR 1977 (1979).

<sup>34</sup> H.R. REP. NO. 1035, 96th Cong., 2d Sess., 99 (1980).

Rail Act of 1980 (the Staggers Act).<sup>35</sup> The Staggers Act removed unnecessary and inefficient regulations; it deregulated the competitive segments of the railroad industry, including railroad freight rates, and provided statutory authority for rail transportation contracts.<sup>36</sup> Congress intended that this legislation protect captive shippers, such as coal producers, by providing statutory criteria ensuring that cross-subsidies and rate impositions on captive traffic are justified.<sup>37</sup>

However, the Interstate Commerce Commission's implementation of the Staggers Act has drawn fire from some legislators who charge that the ICC is subverting the intent of Congress.<sup>38</sup> Representative Ron Marlenee (R-Mont.) and eleven other House co-sponsors introduced a coal rail-rate resolution on November 15, 1983. It expresses congressional sentiment that the ICC has not exercised its statutory authority in a manner that adequately balances the needs of coal shippers and energy consumers against the interests of rail carriers.<sup>39</sup>

The same concern is reflected in identical bills introduced in March 1983 by Senator Wendell Ford (D-Ky.) and Representative Nick J. Rahall (D-W. Va.).<sup>40</sup> The Ford-Rahall proposals would strengthen captive shipper protection by amending the Staggers Act to: (1) define market dominance; (2) prohibit the ICC from exempting market dominant traffic from regulation; (3) establish guidelines for determination of maximum rate reasonableness and railroad revenue adequacy; and (4) reauthorize the Railroad Accounting Principles Board that was authorized by the Staggers Act but never created.

### B. Pipeline Proposals

As an alternative to rail transportation, coal shippers' interest in developing interstate coal slurry pipelines is a matter of considerable legislative activity. The construction of pipelines has been impeded by the difficulty of obtaining right-of-ways, especially across railroad-owned lands, within each state. To overcome this problem, legislation was introduced in the 98th Congress,<sup>41</sup> to grant federal eminent domain authority for construc-

<sup>35</sup> Pub. L. No. 96-448, 94 Stat. 1895 (1980) (codified at 49 U.S.C. § 10,101 (Supp. V 1981)).

<sup>36</sup> 49 U.S.C. § 10,713 (Supp. V 1981).

<sup>37</sup> 49 U.S.C. § 10,707a (Supp. V 1981).

<sup>38</sup> OVERSIGHT OF THE STAGGERS RAIL ACT OF 1983: HEARINGS BEFORE THE SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION, 98th Cong. 1st Sess. 3,4,5 (1983) (statements of U.S. Senator Wendell H. Ford, D. Ky., U.S. Senator J. James Exon, D. Neb., U.S. Senator John W. Warner, R. Va.).

<sup>39</sup> H.R. CON. RES. 219, 98th Cong., 1st Sess., 129 CONG. REC. H9,840-41, H9,943 (1983).

<sup>40</sup> S. 1082, 98th Cong., 1st Sess., 129 CONG. REC. S4,583-85 (1983); S. 2584, 98th Cong., 1st Sess., 129 CONG. REC. E1,621-23 (1983).

<sup>41</sup> S. 267, 98th Cong., 1st Sess., 129 CONG. REC. S463-67 (1983); H.R. 1010, 98th Cong., 1st Sess., 129 CONG. REC. H200 (1983).



tion of slurry pipelines. This legislation would have given states new authority to control and regulate the use of water for the pipelines.<sup>42</sup>

The coal pipeline proposals received favorable action by committees in the House and Senate.<sup>43</sup> However, the House bill failed passage on a vote of 182-235.<sup>44</sup> The issue has not been put to a vote on the Senate floor.

### C. *User Fees for Inland Waterways*

Where coal has reasonable access to the waterway system, barging represents another mode of transportation. In 1980, approximately 142 million tons of coal were transported over our nation's waterways. Historically, the nation's inland waterway system and its seaports have been operated, maintained and improved at the full expense of the federal government. During the Carter Administration, the concept of a navigation "user fee" was championed. The plan would assess a charge on the user of a facility to pay some portion of the facility's upkeep and improvement.

The lack of a consensus over user fees and how navigation channels should be paid for has caused an eight-year lapse in funding for inland river and seaport projects. Proponents of these projects argue that this lapse has reduced the safety, capacity, and efficiency of the navigation system. Most notably, it has affected the Ohio, Monongahela, Mississippi, Kanawha, and Black Warrior Rivers, all highly utilized for the movement of coal.<sup>45</sup>

During the 97th Congress, the Reagan Administration introduced a user fee bill for the inland waterways system<sup>46</sup> which proposed to shift the full costs of all operation, maintenance, and improvements of the navigation system to the private sector. However, the issue proved to be divisive. The legislation was not considered on the floor of the House or Senate by the 97th Congress, and the battle was carried over into the 98th Congress, where the Administration introduced new legislation. It is intended to recover 70% of the costs of building, operating, and maintaining inland waterway facilities from the private sector. The plan calls for levying a 1.1 mills per ton-mile user fee on commercial river traffic.<sup>47</sup>

In contrast to the Administration approach, the National Inland Water-

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<sup>42</sup> SENATE COMM. ON ENERGY AND NATURAL RESOURCES, COAL DISTRIBUTION AND UTILIZATION ACT OF 1983, S. REP. NO. 61, 98th Cong., 1st Sess., 17-18 (1983).

<sup>43</sup> *Id.*; HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, AMENDING THE MINERAL LEASING ACT OF 1920 WITH RESPECT TO THE MOVEMENT OF COAL, INCLUDING THE MOVEMENT OF COAL OVER PUBLIC LANDS, AND FOR OTHER PURPOSES, H.R. REP. NO. 64, 98th Cong., 1st Sess. (1983).

<sup>44</sup> 129 CONG. REC. H7,486-522 (1983).

<sup>45</sup> 129 CONG. REC. S5,636-41 (1983).

<sup>46</sup> S. 810, 97th Cong., 1st Sess., 127 CONG. REC. S2,780-82 (1981).

<sup>47</sup> S. 1554, 98th Cong., 1st Sess., 129 CONG. REC. S9,335-37 (1983).

ways Urgent Improvement Act of 1983<sup>48</sup> does not call for the imposition of user fees. It would authorize improvements at some critical inland navigation junctions: the Ohio River's Gallipolis Lock and Dam, Locks and Dams 7 and 8 on the Monongahela River; Winfield Lock on the Kanawha River, a second chamber at lock No. 26 on the Upper Mississippi and the Oliver Lock on the Black Warrior River. The total price tag is estimated at \$1 billion and federal outlays would be stretched out over the construction cycle.

#### D. Ocean Port Improvements

Congress also is sidestepping user fees as a means of funding ocean port improvements. The Deep-Draft Navigation Act of 1983<sup>49</sup> would authorize federal contributions to pay part of the costs of deepening channels beyond forty-five feet to accommodate supercollier vessels. It would impose a nationwide *ad valorem* fee to pay a portion of the costs for maintenance dredging of commercial navigation channels at seaports. Additionally, the National Harbor Improvement and Maintenance Act<sup>50</sup> and the Port Development and Navigation Improvement Act of 1983<sup>51</sup> also propose to adjust funding policy for navigation maintenance and improvement projects. It should be pointed out, however, that the leading bills on this issue, in both the House and Senate, do not mandate any federal user fees for either inland waterway or seaport improvement projects.

In the House, the Water Resources, Conservation, Development and Infrastructure Improvement and Rehabilitation Act of 1983,<sup>52</sup> would provide federal funds to pay for 50% of the costs for constructing and maintaining channels deeper than forty-five feet and would give local authorities the option of collecting user fees to pay the remaining share. For inland rivers, the measure would authorize repairs for lock and dam projects along the most heavily utilized coal transportation routes, without new user fees. But the measure would not impose any user fees to pay for operation and maintenance dredging on existing channels.

In the Senate, the Water Resources Development Act of 1983<sup>53</sup> would not provide any federal funds for deepening channels to handle super coal colliers. It would permit, but not require, ports to collect user fees to pay for constructing channels deeper than forty-five feet. For inland rivers, the bill would limit funding to \$660 million per year. User fees could be levied to pay

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<sup>48</sup> S. 1171, 98th Cong., 1st Sess., 129 CONG. REC. S5,636-41 (1983).

<sup>49</sup> S. 865, 98th Cong., 1st Sess., 129 CONG. REC. S3,454-67 (1983); H.R. 2406, 98th Cong., 1st Sess., 129 CONG. REC. H1,820, E1,395-96 (1983).

<sup>50</sup> S. 970, 98th Cong., 1st Sess., 129 CONG. REC. S4,128, 4,129-35 (1983).

<sup>51</sup> H.R. 1512, 98th Cong., 1st Sess., 129 CONG. REC. H578, E507-09 (1983).

<sup>52</sup> H.R. 3678, 98th Cong., 1st Sess., 129 CONG. REC. H5,801 (1983).

<sup>53</sup> S. 1739, 98th Cong., 1st Sess., 129 CONG. REC. S11,443, 11,458-66 (1983).

for operation and maintenance dredging and construction improvement costs in excess of that limited amount. The proposal also would create a two-year study commission to determine what the federal share of maintenance dredging costs should be for seaports.

### E. *Coal Shipping*

While coal export proponents in Congress promote channel deepening legislation to capitalize on cost-saving supercolliers, they are combatting maritime-backed legislation that would require U.S. coal to be transported to foreign markets in high-cost U.S. flag vessels. The Competitive Shipping and Shipbuilding Act of 1983 and companion bills<sup>54</sup> would require a percentage of all U.S. bulk shipments, including coal, to be carried in American-registered vessels operated by American crews.

In a final transportation note, the Tennessee-Tombigbee Waterway, which is expected by some to carry significant amounts of coal, received final funding during the first session of the 98th Congress.<sup>55</sup>

## III. RESEARCH AND DEVELOPMENT

In the past, federal research and development projects have been focused on developing near-term technologies and large-scale demonstration operations. The Reagan Administration has put more emphasis on the role of private enterprise in energy research and development. The Department of Energy's (DOE) role under the current Administration is to "help establish an adequate scientific and engineering knowledge base so that the private sector can apply new and improved technologies for making use of [America's] vast [energy] resources."<sup>56</sup>

Under this philosophy, the Department of Energy will leave the commercial introduction of developed technologies to the private sector and will focus its research and development efforts in areas which industry could not be expected to undertake, because of the cost involved and because of its own long-term, high-risk projects.

For the past two years, the Administration has cut back requests for

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<sup>54</sup> S. 1000, 98th Cong., 1st Sess., 129 CONG. REC. S4,259, 4,279-82 (1983); H.R. 1242, 98th Cong., 1st Sess., 129 CONG. REC. H321, 333-38 (1983); H.R. 801, 98th Cong., 1st Sess., 129 CONG. REC. H135 (1983); S. 1624, Merchant Marine Revitalization Act of 1983, 98th Cong., 1st Sess., 129 CONG. REC. S10,017, 10,023-26, 10,206 (1983).

<sup>55</sup> Energy and Water Development Appropriations Act, 1984, Pub. L. No. 98-50, 97 Stat. 247 (1983).

<sup>56</sup> TO REVIEW THE PRESIDENT'S PROPOSED BUDGET FOR FISCAL YEAR 1984 IN CONNECTION WITH THE PREPARATION OF THE MARCH 15 REPORT TO THE SENATE BUDGET COMMITTEE: HEARINGS BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, 98th Cong. 1st Sess. 10 (1983).

research and development funds for coal projects. The proposed cuts have created major budget battles in which Congress has successfully protected substantial funding for coal research and development. For example, in the fiscal year 1984 appropriations bill for energy and water projects, Congress added \$129,350,000 to the amount the Administration sought in its federal budget proposal. Those additional funds were targeted principally for magnetohydrodynamic research fuel cells and other advanced research projects.<sup>57</sup> Congress is also considering further coal-related research and development fundings through the National Science, Technology, and Engineering Development Act of 1983.<sup>58</sup> That bill would establish a five-year, \$778 million cost-sharing program to promote the expanded use of coal through new and advanced technologies in an environmentally acceptable manner.

Another bill, the Magnetohydrodynamics Research, Development, and Demonstration Policy Act of 1983,<sup>59</sup> would require the Secretary of Energy to provide for an accelerated program of research and development for the production of electricity and magnetohydrodynamics. The program would lead to the construction and operation of at least one major proof of concept demonstration project in connection with an existing electric powerplant. Additionally, the Environmental Research, Development, and Demonstration Act of 1984,<sup>60</sup> would enable the Environmental Protection Agency (EPA) to conduct environmental research and develop demonstration projects associated with: (1) synthetic fuels production; (2) processing, transporting and combustion of coal, oil, natural gas and other fossil fuels; and (3) energy development activities and related problems posing threats to public health and environment.

A bill introduced late in 1983<sup>61</sup> would provide \$7.5 million in federal matching funds for qualified mining and minerals research institutes meeting certain eligibility criteria at one public college or university in states. Each institute would be directed to conduct research in mining and to train minerals engineers and scientists. Finally, legislation pending in the Senate<sup>62</sup> would enable the appropriate Energy Department to participate in a joint venture with Kentucky, the Tennessee Valley Authority and nonfederal entities in establishing a facility to demonstrate coal-fired electric power generated from an atmosphere fluidized bed combustion process.

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<sup>57</sup> Energy and Water Development Act, 1984, Pub. L. No. 98-50, 97 Stat. 247 (1983).

<sup>58</sup> S. 1925, 98th Cong., 1st Sess., 129 CONG. REC. S13,676-79, 13,767 (1983); H.R. 4182, 98th Cong., 1st Sess., 129 CONG. REC. H8,510, E5,031-34 (1983).

<sup>59</sup> S. 1278, 98th Cong. 1st Sess., 129 CONG. REC. S6,601, 6,614-16 (1983).

<sup>60</sup> H.R. 2899, 98th Cong. 1st Sess., 129 CONG. REC. H2,669 (1983).

<sup>61</sup> S. 2186, 98th Cong. 1st Sess., 129 CONG. REC. S16,953, 17,052-54 (1983); H.R. 4214, 98th Cong. 1st Sess., 129 CONG. REC. H8,635 (1983).

<sup>62</sup> S. 535, 98th Cong. 1st Sess., 129 CONG. REC. S1,308, 1,364-65 (1983).

## IV. TAXES

In the revenue-conscious Congress, coal taxes are a matter of considerable debate. The Severance Tax Equity Act of 1983 was introduced in both the Senate and the House. It proposes to limit the amount of severance taxes imposed by states on oil, natural gas, and coal.<sup>63</sup> Nearly all coal-producing states impose severance taxes—a tax on the value of natural resources extracted from lands within state boundaries.<sup>64</sup> Generally, these taxes average about 5% of the value of the resource. But in two important coal states, Montana and Wyoming, coal severance taxes are 30% and 17%, respectively. The high tax rates have brought cries of unfair taxation from Midwest and central Southwest states that burn low-sulphur Montana and Wyoming coal at electric powerplants.

The Severance Tax Equity Act proposes to limit severance tax rates so that they reflect costs directly attributable to the production of the resource. The Senate bill establishes the base level for state severance taxes at the taxing level used in 1978, plus an adjustment for inflation. Any state assessing a higher tax would have to prove the additional amount is related to extracting activities. Additionally, the bill sets forth enforcement procedures and allows the Attorney General of the United States or any person who pays a severance tax to bring a civil action in a district court in order to enforce the limitation.

Another coal-related tax issue pending in the 98th Congress involves the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).<sup>65</sup> TEFRA reduced the allowable percentage depletion deduction for both coal and iron ore from 10% to 8.5%. Legislation has been introduced in both houses to repeal the coal tax provisions in TEFRA and restore the depletion allowance for coal to 10%.<sup>66</sup>

Also on the tax slate, the Comprehensive Mining Reclamation Reserve Act of 1983<sup>67</sup> was introduced to codify existing court rulings which permit surface mining companies to accrue monetary reserves for reclamation expenses. The bill is aimed at a dispute that has been simmering since the 1940s—whether or not reclamation reserves can be accrued. The Internal Revenue Service has taken the position that reclamation costs cannot be accrued and deducted as the land is disturbed. It says a deduction can only be

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<sup>63</sup> S. 163, 98th Cong., 1st Sess., 129 CONG. REC. S973, 1,073-75 (1983); H.R. 2690, 98th Cong., 1st Sess., 129 CONG. REC. H2,313, E1,803-04 (1983).

<sup>64</sup> See, e.g., COLO. REV. STAT. §§ 39-29-101 to -114 (1982); MONT. CODE ANN. §§ 15-35-101 to -122 and 15-36-101 to -122 (1983); N.M. STAT. ANN. §§ 7-26-1 to -11 and 7-29-1 to -22. (1980).

<sup>65</sup> Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324 (1982).

<sup>66</sup> S. 1006, 98th Cong., 1st Sess., 129 CONG. REC. S4,259, 4,297-98 (1983); H.R. 3353, 98 Cong., 1st Sess., 129 CONG. REC. H4,102 (1983).

<sup>67</sup> S. 237, 98th Cong., 1st Sess., 129 CONG. REC. S385, 422-24 (1983).

taken at the time money is spent to restore the land, which, as developers point out, may be years after a taxpayer has received income from a given mine. On December 31, 1981, the Tax Court in *Ohio River Collieries Company v. Commissioner*<sup>68</sup> ruled in favor of the taxpayer and found that reclamation reserves could be accrued. The proposal and companion legislation<sup>69</sup> would allow coal operators who select the accrual method of accounting to deduct reclamation expenses as mining operations progress.<sup>70</sup>

Senator Arlen Specter (R-Pa.) introduced legislation<sup>71</sup> to amend the Internal Revenue Code of 1954 to increase the energy investment tax credit for conversions to coal-fueled facilities. The bill would allow an energy investment tax credit of 10% for equipment used for conversions to coal fuel and 5% for coal-mining equipment. Both credits would terminate after 1993. Moreover, the plan would allow a twelve-month amortization period for pollution control facilities used in connection with a plant that uses coal as its principal fuel. Present law allows for such amortization over a longer, five-year period. Additionally, Senator Specter's bill would raise the income tax credit for increasing research activities from 25% to 50% for activities related to coal mining or burning and controlling pollutants caused by coal burning. It would repeal the 15% reduction in the depletion allowance for coal and iron ore.

Senator Charles Percy (R-Ill.) introduced another bill to amend TEFRA. The legislation would treat certain coal gasification facilities as transitional safe harbor lease property for income tax purposes.<sup>72</sup>

The Energy Security Tax Incentives Act of 1983 allows investors to take energy tax credits on equipment used in the coal conversion process and would extend the affirmative commitment date from 1985 to 1992.<sup>73</sup>

Some Clean Air Act legislation, dealt with elsewhere in this Article, would impose a fee or tax on coal to finance clean-up costs associated with acid rain problems. Late in 1983, Senator Robert Dole (R-Kan.), Chairman of the Senate Finance Committee, introduced the concept of imposing an energy tax for the purpose of raising revenues and offsetting federal budget deficits. Senator Dole proposes a 2% excise tax on the sale of coal, with proceeds allocated toward alleviating the effects of acid rain.

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<sup>68</sup> 77 T.C. 1369 (1981), *appeal dismissed*, (6th Cir. 1982).

<sup>69</sup> S. 1307, 98th Cong., 1st Sess., 129 CONG. REC. S6,899-900, 6,999 (1983).

<sup>70</sup> H.R. 3342, Mineral Mining Reclamation Reserve Act of 1983, 98th Cong., 1st Sess., 129 CONG. REC. H4,101-02, E2,991 (1983).

<sup>71</sup> S. 1732, 98th Cong., 1st Sess., 129 CONG. REC. S11,443, 11,445-47 (1983).

<sup>72</sup> A Bill to Amend the Tax Equity and Fiscal Responsibility Act of 1982 to Treat Certain Coal Gasification Facilities as Transitional Safe Harbor Lease Property, S. 1437, 98th Cong., 1st Sess., 129 CONG. REC. S7,925, 7,939-40 (1983).

<sup>73</sup> S. 1396, 98th Cong., 1st Sess., 129 CONG. REC. S7,652, 7,666-69 (1983).

## V. ENVIRONMENT

Environmental legislation could have a significant impact on the production and utilization of American coal in both domestic and international markets; and acid rain is one of the major environmental issues of the 1980s. Acid rain, more properly termed acid deposition, refers to both the wet and dry depositing of acids from the atmosphere. These are predominantly acids of sulfur and nitrogen, which can alter the chemical makeup of land and water. The complex chemical interactions in the atmosphere of sulfur, nitrogen and other elements is not well understood. Moreover, sulfur and nitrogen emissions are both natural and artificial. World-wide, natural sulfur emissions from sea-spray evaporation, organic decomposition, and volcanoes comprise about 60% of total emissions.

Congress has heard strong disagreements and conflicting testimony about the role of fossil fuels burning in the creation of acid rain.<sup>74</sup> Legislative proposals for controlling acid rain have focused on fossil fuel burning by electric utilities which are considered a major source of emissions that cause acid rain. For example, the National Acid Deposition Control Act of 1983<sup>75</sup> would eliminate fourteen million tons of sulfur dioxide and nitrogen oxide emissions by 1995 through the following methods:

(1) Seven million tons would be eliminated by the installation of scrubbers by 1990 on the fifty largest coal burning electricity plants that burn medium or high-sulfur coal;

(2) Three million tons would be eliminated in state initiatives targeted to reach below 1980 levels of emissions;

(3) 1.5 million tons of nitrogen oxide emissions would be eliminated by tightening new source performance standards for nitrogen oxide emissions from new power plants; and

(4) 2.5 million tons would be eliminated by 1995 by requiring some new trucks to meet tighter standards for nitrogen oxide emissions.

The bill would impose a fee of one mill on the generation or import of a kilowatt hour on all but nuclear energy to finance new pollution control equipment. This fee would pay for 90% of the capital cost of installing scrubbers or other pollution control equipment required to reduce emissions. The fee would be terminated in 1995.

Another bill, the National Acid Deposition Reduction Act of 1983<sup>76</sup> is aimed at reducing acid deposition by 10 million tons by January 1, 1993, in the thirty-one states east of and bordering the Mississippi River. Reductions

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<sup>74</sup> ACID PRECIPITATION AND THE USE OF FOSSIL FUELS: HEARING BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, 97th Cong., 2nd Sess. (1982).

<sup>75</sup> H.R. 3400, 98th Cong., 1st Sess., 129 CONG. REC. H4,973, E3,194-95 (1983).

<sup>76</sup> S. 2001, 98th Cong., 1st Sess., 129 CONG. REC. S14,528, 14,557-63 (1983).

would be achieved through the use of control technology. An emissions tax would be imposed on sulfur dioxide and nitrogen oxide emissions from major stationary and mobile sources in all fifty states. The revenue from the tax would be placed in a trust fund, to be used by EPA to help electric utilities and industrial facilities cover the capital cost and operating expenses of control technology to reduce sulfur dioxide emissions. A portion of the trust fund would be set aside for air pollution problems in states west of the Mississippi.

The Clear Air Act Amendments of 1983<sup>77</sup> call for an eight million ton-per-year reduction in sulfur dioxide emissions by 1995. Compliance methods would be selected by regulatory agencies in the thirty-one states affected by the legislation. The state agencies could choose to use new scrubber systems or switch to lower sulfur coal.

But the Acidic Deposition Mitigation and Research Act<sup>78</sup> takes a different approach on acid deposition. It would require EPA to complete a report on the cause and effects of acid precipitation by 1987, five years earlier than the deadline set by the Acid Precipitation Act of 1980.<sup>79</sup> The report would look into methods for controlling precursor emissions, as well as the impact these technologies would have on economic growth and employment. Additionally, EPA would be authorized to make grants to states to aid in the mitigation of harmful effects from high acidity.

In the area of clean water, the Clean Water Act Amendments of 1983<sup>80</sup> would: (1) provide a five-year reauthorization of the Clean Water Act;<sup>81</sup> (2) extend compliance dates to July 1, 1987; (3) codify existing water quality standard regulations (subject to committee floor amendment based on EPA final water quality regulations); and (4) provide for issuance of ten-year National Pollutant Discharge Elimination System permits required for all polluting industries.

## VI. EXPORTS

In 1981, the Reagan Administration issued a "Coal Export Policy Statement" making a commitment to greater American participation in the international coal sales market.<sup>82</sup> The policy indicated support for navigation im-

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<sup>77</sup> S. 768, 98th Cong., 1st Sess., 129 CONG. REC. S2,547, 2,583-601 (1983).

<sup>78</sup> S. 454, 98th Cong., 1st Sess., 129 CONG. REC. S972, 936-37 (1983); H.R. 1405, 98th Cong., 1st Sess., 129 CONG. REC. H512 (1983).

<sup>79</sup> Energy Security Act § 701, 42 U.S.C. §§ 8701-95 (Supp. V 1981).

<sup>80</sup> S. 431, 98th Cong., 1st Sess., 129 CONG. REC. S972, 1,008-11 (1983).

<sup>81</sup> Clean Water Act of 1977, Pub. L. No. 95-217, 91 Stat. 1566 (codified at 33 U.S.C. §§ 1251-1376 (1976 & Supp. V 1981)).

<sup>82</sup> Department of Commerce, Coal Export Policy Statement, Office of Secretary (July 17, 1981).



provements and increased foreign infrastructure investments. A key element of the policy was the creation of an active export promotional program, headed by the Department of Commerce.

The Commerce Department formed the Coal Interagency Working Group (CIWG) in August 1981. The working group is directed by the Assistant Secretary for Trade Development, and is supported by the Commerce Department's Office of Coal Exports. The goals of the CIWG are to: (1) coordinate efforts of all government agencies to "fast-track" government involvement in the coal exporting process; (2) assure communications among government agencies involved in the interrelated aspects of coal as an export; (3) promote the United States as a long-term supplier of coal to international markets; and (4) coordinate involvement of industry, states, and others with interests in coal exporting. However, administrative and legislative actions<sup>83</sup> have cast a shadow of doubt over the future role of the Commerce Department and its Office of Coal Exports in the promotion of American coal because the department is undergoing a reorganization. At this writing, it is not clear whether the coal office will continue as a separate entity or be combined into an energy office. Moreover, the pending Trade Reorganization Act of 1983 and other far-reaching trade development measures<sup>84</sup> propose combining the Commerce Department into a new Department of Industry and Trade. These measures do not address what role the new Department will play in promoting United States coal in overseas markets.

Congress has been very interested in American activity in the international coal sales market, and has held extensive hearings on the subject. It is examining what role, if any, the federal government should play in promoting United States coal overseas.<sup>84</sup> Most notably, the ICC's move to deregulate export coal<sup>85</sup> has been the subject of critical examination by the Senate Energy and Natural Resources Committee.<sup>86</sup>

In another important effort prior to President Reagan's meeting with Japanese Prime Minister Nakasone in November of 1983 to discuss trade and energy matters, a Senate resolution was introduced calling on the Administration to encourage Japan to make a long-term commitment to purchase one-third of its metallurgical and steam coal from the United States.<sup>87</sup>

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<sup>83</sup> S. 121, 98th Cong., 1st Sess., 129 CONG. REC. S92 (1983).

<sup>84</sup> AMERICA'S ROLE IN THE WORLD COAL EXPORT MARKET: HEARINGS BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, PTS 1,2,3, 97th Cong., 1st Sess. (1981), Pt. 4, 97th Cong., 2nd Sess. (1982).

<sup>85</sup> Ex Parte No. 346 (Sub No. 7), Railroad Exemption-Export Coal, 367 I.C.C. 570 (1983).

<sup>86</sup> CONDITION OF AMERICA'S COAL INDUSTRY: IMPACT OF RAILROAD RATES AND REGULATORY POLICIES ON U.S. COAL SALES IN THE DOMESTIC AND INTERNATIONAL MARKETS: HEARING BEFORE THE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, 98th Cong., 1st Sess. (1983) (unprinted as of Jan., 1984).

<sup>87</sup> S. Con. Res. 79, 98th Cong., 1st Sess., 129 CONG. REC. S14,696-98 (1983).

The nonbinding resolution was submitted prior to President Reagan's visit. In 1984, further legislative efforts will likely be undertaken to assist the United States coal industry's efforts in the export area.

## VII. SYNFUELS

The United States Synthetic Fuels Corporation (SFC) was created in 1980 to provide financial assistance to synthetic fuels projects.<sup>88</sup> The goal of SFC is to achieve synthetic fuel production utilizing domestic resources, equivalent to at least 500,000 barrels of crude oil per day by 1987 and at least 2,000,000 barrels per day by 1992.<sup>89</sup> However, congressional dissatisfaction with the SFC is reflected in pending proposals to abolish it completely,<sup>90</sup> or reduce it to solely a research and development organization.<sup>91</sup> The Synthetic Fuels Corporation Amendments of 1983<sup>92</sup> would extend the financing authority of the SFC to include projects for district heating and cooling and for municipal waste recovery. The Synthetic Fuels Corporation Fiscal Accountability Act of 1983<sup>93</sup> would prohibit the SFC from making new awards of financial assistance before a comprehensive synfuels strategy is approved by Congress.

## CONCLUSION

Coal-related legislation has been a predominate focus of the 98th Congress. Both the problems and recommended solutions have been subjected to extensive debate. Our nation's goal of energy independence requires the maximum use of coal. But coal development and use must be accomplished in a manner which considers all the related issues as well. It is these issues which have drawn and will continue to draw the attention of the 98th Congress.

America must strive to increase utilization of its coal in the coming years. Our independence from foreign energy sources can be achieved in a manner consistent with all public interests. Congress has committed itself to resolving the problems associated with coal in order to increase utilization of America's coal both domestically and internationally.

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<sup>88</sup> Energy Security Act, Pub. L. No. 96-294, 91 Stat. 611 (codified at 42 U.S.C. §§ 8701-95 (Supp. V 1981)).

<sup>89</sup> *Id.* § 125, 94 Stat. 644 (codified at 42 U.S.C. § 8721 (1980)).

<sup>90</sup> S. 250, 98th Cong., 1st Sess., 129 CONG. REC. S386, 444 (1983); H.R. 3380, 98th Cong., 1st Sess. (1983).

<sup>91</sup> H.R. 1701, 98th Cong., 1st Sess., 129 CONG. REC. H658, 661-62, 666 (1983).

<sup>92</sup> H.R. 2489, 98th Cong., 1st Sess., 129 CONG. REC. H1,992 (1983); S. 2076, 98th Cong., 1st Sess., 129 CONG. REC. S15,768, 15,769-771 (1983).

<sup>93</sup> H.R. 4098, 98th Cong., 1st Sess., 129 CONG. REC. H8,080 (1983).

